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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66256; File No. SR-NASDAQ-2012-012)

January 26, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Fee for a Written Interpretation of the Nasdaq Listing Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 13, 2012, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the fee for a written interpretation of the Nasdaq listing rules. Nasdaq will implement the proposed rule change immediately.

(a) The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.³

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5602. Written Interpretations of Nasdaq Listing Rules

(a) A Company listed on the Nasdaq Capital Market or the Nasdaq Global Market may request from Nasdaq a written interpretation of the Rules contained in the Rule 5000 through 5900 Series. In connection with such a request, the Company must submit to Nasdaq a non-refundable fee of [\$15,000]\$5,000. [(b)] A response to such a request[for a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com>.

written interpretation] generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request[, although if a Company requires a response by a specific date it should state the date in its request for the written interpretation and Nasdaq will attempt to respond by that date].

(b) Notwithstanding paragraph (a), a Company may request a written interpretation of the Rules contained in the 5000 through 5900 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. In connection with such a request for an expedited response, the Company must submit to Nasdaq a non-refundable fee of \$15,000.

(c) - (f) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq rules allow a company to request from Nasdaq a written interpretation on the application of the Nasdaq listing rules, contained in the Rule 5000 through 5900 Series. Nasdaq proposes to modify the fee in connection with such a request. Today, a company is required to submit a non-refundable fee of \$15,000,⁴ and Nasdaq generally provides a response to the request within four weeks from the date Nasdaq receives all information necessary to respond to

⁴ See Nasdaq Listing Rule 5602(a).

the request, although if a company requires a response by a specific date, Nasdaq will attempt to respond by that date.⁵

Previously, Nasdaq rules provided for two tiers of fees for a written interpretation of the Nasdaq listing rules, depending on the urgency of the request. Nasdaq eliminated that two-tier structure because few companies took advantage of the lower fee alternative.⁶ However, Nasdaq has received feedback from listed companies and their counsel that the option to submit a non-expedited request for a lower fee is an important alternative. Accordingly, Nasdaq proposes to revert to the prior version of the rules,⁷ under which a company could submit a non-refundable fee of \$5,000 for a regular request, to which Nasdaq generally will provide a response within four weeks from the date Nasdaq receives all information necessary to respond to the request. As under the current rule, a company may, alternatively, submit a non-refundable fee of \$15,000 for an expedited request, in which the company requests a response by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all necessary information.

Under the proposal, companies would have the option to choose an expedited or non-expedited track for their request, and no company will pay a higher fee for a written interpretation of the Nasdaq listing rules than is currently charged. Nasdaq will continue to endeavor to respond to all requests as quickly as possible, while making appropriate decisions as to the application of the Nasdaq rules. Nasdaq also will continue not to charge companies for oral guidance on the Nasdaq rules.⁸

⁵ See Nasdaq Listing Rule 5602(b).

⁶ See Securities Exchange Act Release No. 34-61669 (March 5, 2010), 75 FR 11958 (March 12, 2010) (approving SR-NASDAQ-2009-081).

⁷ Id.

⁸ The Commission notes that Nasdaq informed Commission staff in connection with a previous rule proposal that Nasdaq does not charge companies for oral interpretation requests of their rules. See supra note 6, 75 FR at 11959 n. 17.

Finally, the proposed rule change will not affect Nasdaq's commitment of resources to its regulatory oversight of the listing process or its other regulatory programs, and the proposed change is not expected to meaningfully impact Nasdaq's revenue from its listing program.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and with Sections 6(b)(4) and (b)(5) of the Act,¹⁰ in particular. The proposed rule change is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Under the proposed rule change, issuers that do not need an expedited request could pay a lower fee. Nasdaq believes that the availability of a lower priced alternative for non-expedited interpretation requests is an equitable allocation of Nasdaq's fees. The proposed rule change also is consistent with Section 6(b)(5) in that it does not unfairly discriminate between issuers in that issuers that do not need an expedited interpretation will have the lower-priced alternative available to them.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4) and (b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-012 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NASDAQ-2012-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

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¹³ 17 CFR 200.30-3(a)(12).